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EDWARD BENNETT WILLIAMS (1920-1988)  
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July 25, 2023

***Via CM/ECF***

The Honorable Richard M. Gergel  
U.S. District Court for the District of South Carolina  
J. Waties Waring Judicial Center  
83 Meeting Street  
Charleston, South Carolina 29401

Re: *In re AFFF Products Liability Litigation*, MDL No. 2:18-mn-2873-RMG (D.S.C.);  
*Tyco Fire Products LP v. AIU Ins. Co., et al.*, No. 2:23-cv-2384-RMG (D.S.C.)

Dear Judge Gergel:

I write to update the Court on the above-referenced insurance coverage action (the “Tyco Coverage Matter”) and to request a telephonic conference to follow up on the Court’s guidance at the July 14, 2023 case management conference.

At the July 14 case management conference, the Court indicated that it “intend[s] to move expeditiously to address coverage issues,” in advance of a possible spring 2024 water provider bellwether trial. Status Conference Tr. (July 14, 2023), at 47:3-10. The Court stated that it anticipated a schedule for the Tyco Coverage Matter that will allow the Court “to address issues in the hope that over the fall and winter we can address and dispose of those issues.” *Id.* at 47:21-22.

To this end, on July 20, 2023, counsel for Tyco in the Tyco Coverage Matter (Allan Moore and Alexis Dyschkant of Covington & Burling LLP) initially reached out to counsel for the AIG Insurers to propose the attached CMO and request a call to discuss case scheduling for the Tyco Coverage Matter.<sup>1</sup> Ex. A, Proposed CMO for MDL Coverage Action. Tyco approached the AIG Insurers first because (1) they issued Tyco primary and first-layer umbrella insurance in the vast majority of years at issue; (2) their primary and umbrella policies collectively account for hundreds of millions of dollars in policy limits (i.e., far more policy limits than those of any other insurer); and (3) the vast majority of excess policies in Tyco’s

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<sup>1</sup> The AIG Insurers are (a) AIU Insurance Company, (b) American Home Assurance Company, (c) Insurance Company of the State of Pennsylvania, (d) National Union Fire Insurance Company of Pittsburgh, Pa., and (e) New Hampshire Insurance Company. The AIG Insurers also may include Defendant Starr Indemnity and Liability Company.

insurance program that sit above the AIG policies “follow form” to the AIG umbrella policies. Accordingly, the AIG Insurers have particular importance in the Tyco Coverage Matter.

On July 21, the AIG Insurers responded that they consider discussion of a CMO to be premature and that they intend to move to dismiss or stay the Tyco Coverage Matter, presumably on or before August 1, 2023, when they are due to respond to the Complaint. Ex. B, Email from Adam J. Kaiser, AIG Counsel, to Allan B. Moore, Tyco Insurance Coverage Counsel (July 21, 2023). The AIG Insurers copied counsel for the other insurer defendants on their response. Mr. Moore has solicited input from these other insurer defendants, but thus far, no other insurer has expressed a view contrary to AIG’s.

Tyco disagrees with AIG’s position that the parties should wait to put in place a schedule for this case. Given the Court’s guidance at the CMC and the August 1, 2023 initial deadline in the attached CMO, Tyco respectfully requests a telephonic conference to discuss the attached proposed CMO and case scheduling for the Tyco Coverage Matter.

Respectfully submitted,

*/s/ Liam J. Montgomery*

Liam J. Montgomery  
on behalf of:

*/s/ Joseph G. Petrosinelli*

Joseph G. Petrosinelli

Attachment

Cc w/att. (via CM/ECF): All Counsel of Record

Cc w/att. (via electronic mail):

Counsel for Insurer Defendants  
Allan B. Moore (Covington & Burling LLP)  
Alexis N. Dyschkant (Covington & Burling LLP)